IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12530 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARMAR LAXMANBHAI DEVABHAI

Versus

DIRECTOR

Appearance:

1. Special Civil Application No. 12530 of 2004

MR MUKTESH V PATEL for Petitioner No. 1

MS. MITA PANCHAL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 04/10/2004

ORAL JUDGEMENT

RULE. In the facts and circumstances of the case and with the consent of the learned counsel for the parties, the petition is taken up for final hearing today.

2. In this petition under Article 226 of the

Constitution, the petitioner has challenged the decision of the respondents not to permit the petitioner to attend the training class of the Bridge Course for Multi-Purpose Health Workers.

3. It is the petitioner's case that the District Health Officer, Sabarkantha had issued an advertisement in the Newspapers in January 2004 for open interview for admission to the training for Bridge Course of Multi-Purpose Health Workers and the applications were invited from those who have passed Sanitary Inspector's Diploma Course. The petitioner had also applied on that occasion but the petitioner and a few other candidates were not selected as they were considered ineligible on account of the fact that at that time the age limit was 17 to 22 years. A large number of posts of Multi-Purpose Health Workers were required to be filled in but sufficient number of candidates were not available within the age limit of 17 to 22 years. Hence, the Government of Gujarat issued Resolution dated 27.04.2004, providing that the minimum age limit for the above course shall be 17 years and the upper age limit shall be 40 years; that the admission procedure shall be regulated by the Director of Health and Family Welfare Organization at Sola, Ahmedabad and that, all the applications which have been received by the District Panchayats shall be forwarded to the Director of State Health and Family Welfare Centre, Sola, Ahmedabad. This relaxation was made in order to fill in about 2300 posts of Multi-Purpose Health Workers lying vacant, of which 800 posts were to be filled in the year 2003-2004, another 750 posts in the year 2004-2005 and the remaining 750 posts in the year 2005-2006. All the posts are to be filled in at a monthly remuneration of Rs.2500 for a period of 11 months on ad hoc basis.

4. After the aforesaid Government Resolution dated 27.04.2004 was issued by the State Government - Director of State Health and Family Welfare Organisation at Sola issued an advertisement in July 2004, inviting applications for admission to the Bridge Course training of three months for the post of Multi-Purpose Health Workers (Males). The advertisement stated that, as indicated in the Government Resolution dated 27.04.2004, the minimum age limit shall be 17 years and the maximum age limit shall be 40 years. The advertisement did not indicate that the upper age limit of 40 years shall apply as on the date of the advertisement. The candidates were also required to submit their applications with particulars of the birth date as indicated in the school leaving certificate, caste certificate in case of SC/ST,

Socially and Educationally Backward Class and testimonials regarding educational qualification such as SSC/HSC and Sanitary Inspector's examination. The petitioner's application, earlier made in January 2004 was forwarded to the Director, State Health and Welfare Organisation at Sola and in view of the said application the petitioner received intimation dated 19.08.2004, calling upon the petitioner to remain present at the State Health and Family Welfare Organisation at Sola on 27.08.2004 along with the attested true copies of the relevant certificates such as Sanitary Inspector's examination certificate, birth certificate, caste certificate, SSC pass certificate etc.

5. On 27.08.2004, the petitioner remained present at the aforesaid centre along with all the relevant certificates and the petitioner was given the admission order dated 27.08.2004 (Annexure-O to the petition), stating therein as under:

> "You are selected for the three month training course of Bridge Course Batch-3. Hence, on 15.09.2004 you shall remain present along with the original certificates and true copies attested by a gazetted officer and with demand draft for Rs.5000 in favour of Director, Gujarat State Health and Family Welfare Organisation, Sola."

As per the said admission order the petitioner was also required to produce the fitness certificate issued by the Civil Surgeon of the District and all the certificates as indicated earlier. The petitioner also underwent medical examination before the Civil Surgeon at Mehsana who granted the fitness certificate dated 1.09.2004 (Annexure-N to the petition). On 15.09.2004 the petitioner appeared at this centre and according to the petitioner he was permitted to attend the training course. The petitioner has also produced at Annexure-Q a copy of the extract of the muster book wherein the petitioner's name is also shown below Rabari Ramji R and above Hirwadia Sureshbhai G.

6. It however, appears that on 16.09.2004 the petitioner was orally informed not to attend training on the ground that the petitioner was overage for the training course. The petitioner therefore, addressed a representation dated 21.09.2004 (Annexure-T to the petition) to the Health Minister, pointing out that his admission was wrongly being cancelled.

Since the petitioner was not permitted to attend the training course, the petitioner moved this petition on 28.09.2004. This Court issued notice returnable on 1.10.2004. At the request of the learned AGP the hearing of the petition was adjourned and the petition has been taken up for final hearing. Whatever defence which the learned AGP wanted to take up have been allowed to be taken as oral submissions without any affidavit.

7. There is no dispute about the petitioner's eligibility for admission to the Bridge Course. In so far as the educational qualifications are concerned, the petitioner has passed the SSC examination and the petitioner has also passed the Sanitary Inspector's diploma examination. The only hurdle in the petitioner's way is the upper age limit, which according to the respondents is 40 years and according to the respondents there is no relaxation even in favour of SC/ST candidates. However, Mr. Muktesh V Patel, learned counsel for the petitioner has relied upon the relaxation as per sub Rule (2) of Rule 8 of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967 in favour of Scheduled Caste/Scheduled Tribe candidates to the extent of five years and has also referred to the Government Resolution dated 25.11.1985 issued by the General Administration Department wherein it is stated that the relaxation shall also be available to the candidates belonging to the Socially and Educationally Backward Classes. The said Resolution also refers to the relaxation in favour of the SC/ST candidates to the extent of five years.

8. It is the contention of the learned counsel for the petitioner that the admission order dated 27.08.2004 was issued on the basis of the application which the petitioner had made to the District Panchayat, Sabarkantha in January 2004 for admission to the Bridge Course in question and in January 2004 the petitioner had not completed 45 years of age because the petitioner's birth date is 1.03.1959. Hence the petitioner completed 45 years of age only on 29.02.2004. The Government Resolution dated 27.04.2004 clearly stated in Clause-4 thereof that all the applications received by the District Panchayat were to be forwarded to the Director of the State Health and Family Welfare Organisation at Sola, and therefore, the upper age limit of 40 yeas + 5 years for SC/ST and SEBC candidates, i.e. 45 years, would apply with reference to the date on which the District Panchayat had received the applications. It is therefore submitted that the petitioner was very much within the upper age limit of 45 years on the date the

District Panchayat, Sabarkantha had received the petitioner's application.

9. On the other hand learned AGP Ms. Mita Panchal submits that the upper age limit is only 40 years and therefore the authorities have acted in accordance with the aforesaid Government Resolution dated 27.04.2004 in taking the decision at the time of verification on 16.09.2004 that the petitioner had crossed the upper age limit and not eligible for the training course in question.

10. Having heard learned counsel for the parties, this Court finds considerable substance in the submissions made by the learned counsel for the petitioner that the relaxation of 5 years for SC/ST candidates is very much available in the matter of admission to the Bridge Course also. In fact the report dated 7.01.2004 submitted by the Director - State Health and Family Welfare Organisation, Sola to the Secretary, Gujarat Government clearly indicates in para D(2) that just as SC/ST candidates are given relaxation in the upper age limit as per the Government Rules, similarly if such relaxation is given to SEBC, more candidates would be available. This itself is sufficient to show that the SC/ST candidates are not to be deprived of the benefit of upper age limit relaxation available to them as per the Government Rules in the matter of recruitment to various other posts.

11. As regards the learned AGP's contention that the upper age limit was required to be looked at, as on the date of the advertisement issued by the Director - State Health and Family Welfare Organisation, Sola on 14.07.2004, the submission overlooks para 4 of the Government Resolution dated 23.04.2004 that all the applications received by the District Panchayats were to be forwarded to the Director.

12. The contention that the relaxation will apply only for recruitment and not for training is required to be rejected for the simple reason that if the candidate is not granted relaxation in the matter of admission to the training, he would never be able to get appointment.

13. The contention that the applications of other candidates have also been rejected on the same ground, cannot defeat the petitioner's right when the Court has found substance in the petitioner's case.

14. It is further required to be noted at this stage

that looking to the marks obtained by the petitioner at the Sanitary Inspector's examination the petitioner was considered to be so meritorious that he was considered as an open merit candidate. However, as per the settled legal position, a Scheduled Caste candidate cannot be put to disadvantage by considering him as an open merit candidate when he is otherwise entitled to avail of the relaxation of the upper age limit as an SC candidate. It is for the candidate to choose whether he would like to be considered as a Scheduled Caste or as an open merit candidate.

15. Rule is accordingly made absolute. The respondents shall permit the petitioner to attend the Bridge Course training which has already commenced on 15.09.2004. This direction shall be complied with forthwith.

The Demand Draft No.1430531 dated 9.09.2004 which was earlier returned to the petitioner shall be deposited by the petitioner with the respondents. This order is pronounced in the Court in the presence of the learned AGP and in the presence of Mr. K.T.Thakkar, Administrative Officer in the Directorate of the State Health and Social Welfare Organisation at Sola.

16. The request to stay the implementation of this order is rejected.

Direct service is permitted.

(M.S.Shah,J)
Jayanti*